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IN THE

Supreme Court of the United States

October Term, 1960
No. 72

PAUL JOHN CARBO,

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONER'S OPENING BRIEF.

Opinions Below.

The District Court delivered no written opinion.

The opinion of the court below [R. 24] is reported at 277 F. 2d 433.

Grounds on Which the Jurisdiction of This Court Is Invoked.

1. The judgment of the court below, affirming the judgment of the District Court [R. 16] denying petitioner's motion to quash the writ of habeas corpus *ad prosequendum*, was dated and entered on March 23, 1960 [R. 30];

2. Petition for writ of certiorari was filed in this Court on April 20, 1960; [R. cover]. Certiorari was granted on May 31, 1960 [R. 44];

3. Statutory provisions believed to confer on this Court jurisdiction to review the judgment in question are 28 U. S. C. 1254(1) and 2101(c), Rule 22(2) and (3) of this Court and Rule 37(b), Federal Rules of Criminal Procedure.

Statutes Involved.

28 U. S. C., 2241 (62 Stat. 964, amended 63 Stat. 105) provides:

"(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

"(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

"(c) The writ of habeas corpus shall not extend to a prisoner unless:

"(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

"(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

"(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

"(4) He, being a citizen of a foreign state and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

"(5) It is necessary to bring him into court to testify or for trial."

28 U. S. C. 1651 (62 Stat. 944, amended 63 Stat. 102) provides:

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

"(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction."

Question Presented for Review.

Does a United States District Court have jurisdiction under 28 U. S. C. 2241 or 28 U. S. C. 1651 to issue a writ of *habeas corpus ad prosequendum* requiring the production of a prisoner, then confined beyond the court's territorial jurisdiction, for trial before the issuing District Court?

Statement of the Case.

Petitioner is a defendant in a criminal proceeding pending in the United States District Court for the Southern District of California [R. 1]. He had been arraigned on December 2, 1959 [R. 10] and had pleaded not guilty on December 8, 1959 [R. 11].

On March 16, 1960, application was made to the District Court by the United States Attorney for a writ of *habeas corpus ad prosequendum* for the production of the body of petitioner in Los Angeles on March 29, 1960 for trial [R. 15]. That same day the court ordered the issuance of the writ [R. 16], and the writ was issued [R. 19].

On the same day petitioner filed a motion to quash the writ on the ground that the court had no jurisdiction to issue it [R. 12].[1] The motion was denied [R. 16] and notice of appeal to the court below was immediately filed [R. 17].

Respondent noticed a motion to dismiss the appeal with the court below for March 22, 1960 [R. 31].

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[1]Petitioner's motion to quash was actually filed two days before, on March 14, 1960 [R. 12]. The explanation for this is that a previous application and order for a writ had been made on March 11, 1960 by the United States Attorney but was defective in form. By stipulation in open court on March 16 (the return date of petitioner's motion to quash the previous writ) it was agreed that the moving papers and the Government's return [R. 14] would be deemed to be addressed to the March 16 papers.

On March 23, 1960, the court below affirmed, on the merits [R. 23, 30], the order of the District Court denying the motion to quash the writ [R. 24-29].

During all this time petitioner was ill and detained in the prison ward of the New York City Bellevue Hospital [R. 13].[1a] Because of that illness petitioner underwent a serious kidney operation on March 25, 1960. On March 28, 1960, the District Court continued the trial of the cause to July 12, 1960, and ordered the issuance of an amended writ, staying the enforcement thereof to June 24, 1960.[2] One of the reasons for the court's so doing was to afford this Court an opportunity to determine the issue herein and to avoid the mooting of this petition.

On June 15, 1960, subsequent to this Court's grant of certiorari, the District Court continued the trial date to February 14, 1961, and ordered a Third Amended writ to issue.[3]

[1a]Petitioner has since been transferred from Bellevue Hospital to the prison on Riker's Island, New York.

[2]A copy of that Order is attached hereto as Appendix "A" and of the Amended Writ issued pursuant thereto, as Appendix "B". Subsequent thereto, on April 12, 1960, the District Court ordered a Second Amended Writ to issue enlarging the persons to whom it is addressed. It is set out hereinafter as Appendix "C".

[3]That Order and the Writ, both dated June 20, 1960, are set out hereinafter as Appendices "D" and "E", respectively.

ARGUMENT.

I.

Under Presently Existing Law, a United States District Court Has No Jurisdiction to Issue an Extraterritorial Writ of Habeas Corpus Ad Prosequendum.

It seems perfectly plain from this Court's decision in *Ahrens v. Clark*, 335 U. S. 188, as well as from its decision in *United States v. Hayman*, 342 U. S. 205, that the power given the District Courts by 28 U. S. C., 2241 is limited territorially whether the particular writ involved is *habeas corpus ad subjiciendum*, as in *Ahrens*, or *testificandum* or *prosequendum*, as here. Accordingly, for the court to have power to issue an extraterritorial writ, that power must somehow be spelled out of 28 U. S. C. 1651, an exercise in orthography we say cannot be done. This, because of the general rule that absent "specific exceptions created by Congress the jurisdiction of the district courts is territorial" (*Ahrens v. Clark*, 335 U. S. at 190), and because the cases, as well as the language of the section, seem clear to the effect that 1651[4] does not, nor did Congress intend to, enlarge the territorial jurisdiction of the courts.

Ahrens holds squarely that a District Court under 28 U. S. C. 2241 has no jurisdiction to issue an extraterritorial writ of *habeas corpus*. The court below holds [R. 26] that *Ahrens* is not in point in this case be-

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[4]Its predecessor, as well as that of 2241, have been on the statute books from the beginning (1 Stat. 81; Sec. 14 of the Act of Sept. 24, 1789). As Appendix "F" hereto, we have set out a chart showing the derivation of the present 28 U. S. C. 1651 and 2241.

cause the writ in that case was *ad subjiciendum* while the writ involved here is *ad prosequendum* and that there is a difference in the function of the two.

But, we respectfully suggest, there is nothing in either *Ahrens* or section 2241 which even remotely permits of a holding that there is any *territorial* difference between the two.[5] The phrase "within their respective jurisdictions" appearing in Subdivision (a) of 2241 applies to the *whole* statute, including subdivision (c)(5),[6] as well as subdivision (c)(3).[7] The holding of the court below to the contrary flies full force in the face of this Court's decision in *Ahrens* as well as of 2241 itself. Moreover, "the statutory scheme" before the court and considered by it, in *Ahrens* (335 U. S. at 190), is precisely that which is before the Court here and overlooked by the court below. All the 1948 revision, which resulted in 28 U. S. C. 2241, did was to combine the previous 28 U. S. C. (1940 Ed.) 451, 452 and 453 and put in one statute what had formerly been in three. Thus, the "within their respective jurisdictions" limitation which was present in Section 452, must also be considered to have applied to Section 453 which is essentially that portion of today's Section 2241 which is found in subsection (c) thereof. The meaning attributed by the court below [R. 26, n. 1] to the elimina-

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[5] *Cf. In re Van Collins* (D. Me. 1958), 160 Fed. Supp. 165, 166, note 1: "The writ of habeas corpus ad prosequendum is merely one variant of the common law writ of habeas corpus, the phrase 'ad prosequendum' being simply the designation of the purpose for which the writ is sought." (Citing cases by this Court.)

[6] "To bring into court to testify or for trial."

[7] "In custody in violation of the Constitution or laws or treaties of the United States."

tion by Section 2241 of the words "for the purpose of inquiring into the cause of restraint of liberty" formerly in Section 452 does not follow. Subsection 5 of subsection (c) of Section 2241 reads that "the writ of habeas corpus (without the words above quoted) shall not extend to a prisoner unless (I)t is necessary to bring him into court to testify or for trial." Therefore it is not correct to say, as does the court below, that the words "habeas corpus", as used in Section 2241 (and as used in former Section 453) means only a proceeding inquiring into the cause of restraint of liberty. To so read the words is to read subdivision (5) of subsection (c) right out of the statute.

The quotation by the court below [R. 27] from *Ponzi v. Fessenden*, 258 U. S. 254, 264, is inapposite. Petitioner does not claim that he is immune from a second prosecution. His point is the very basic one that a federal (or, indeed, any) court must obey the law in issuing its orders and that an order issued by a court which is, as we say, beyond and in excess of its jurisdiction cannot be permitted to stand.

The court below next holds [R. 29] that there is extraterritorial jurisdiction to issue the writ under 28 U. S. C. 1651 (the "all writs" statute). This, the court says is so by virtue of this Court's decision in the *Hayman* case. The court's reasoning is [R. 28] that the trial court has jurisdiction over the offense and over petitioner and therefore the writ is in aid of that jurisdiction. But this reasoning proves too much and the *Hayman* case holds no such thing. If accepted, it would mean that the territorial jurisdiction of the District Courts would be completely obliterated and those courts would, in effect, be but one nationwide court

merely because the court has jurisdiction of the case. Before so revolutionary a concept can be attributed to Congress or accepted, certainly Congress would have said so.

Rather than being "illustrative" of the fact that the District Courts have extraterritorial jurisdiction to issue writs of *habeas corpus ad prosequendum,* as stated by the court below [R. 28], the two rules of criminal procedure cited (*ibid.*) by it [4(c)(2)—warrants; and 17(e)(1)—subpoenas] are precisely illustrative of the contrary. They show that unless Congress (in these instances, through the rule making authority of this Court) wants to give the District Courts extraterritorial jurisdiction, those courts simply do not have it. The revisor's notes to Rule 4(c)(2) say:

> "This rule and Rule 9(c)(1) modify the existing practice under which a warrant may be served only within the district in which it is issued. Mitchell v. Dexter, C. C. A. 1, 1917, 244 F. 926; Palmer v. Thompson, 1902, 20 App. D. C. 273; . . ."

Thus, the rules enlarged the territorial jurisdiction of the district courts as to warrants and subpoenas only. There are "specific exceptions" as to them. The rule changes did not, however, nor do they purport to, enlarge the territorial jurisdiction of the court with respect to writs of *habeas corpus ad prosequendum.*

That no extraterritorial jurisdiction is breathed into 28 U. S. C. 1651(a) by virtue of the fact, relied upon by the court below [R. 28], that the district court has jurisdiction over the offense and over the defendant is illustrated and emphasized by the fact that subsequent to the decisions in the *Mitchell v. Dexter* and *Palmer*

v. Thompson cases referred to in the revisor's note to Rule 4(c)(2), and because of those cases, the rules were changed to enlarge the territorial jurisdiction of the District Courts *as to certain situations*; that without "such specific exceptions" the general rule of territorial limitation applies. Thus, in *Palmer v. Thompson* (1902), 20 App. D. C. 273, the issuing District Court had jurisdiction over the offense and over the defendant. There the defendant had already been tried and found guilty in the Eastern District of Tennessee and was wanted back from the District of Columbia for sentencing. At that time (1902) the "all writs statute" was then too in the law (Rev. Stats. Sec. 716)[8] and read essentially the same way as it does today.[9]

So also did the Eastern District of Wisconsin have "jurisdiction" over the cause and the defendant in *Mitchell v. Dexter,* 244 Fed. 926 (C. C. A. 1, 1917). But this, nor the then "all writs statute" (see f. n. 8 and 9 *supra*), did not enlarge the territorial jurisdiction of the Wisconsin court to issue its writ of arrest for effectuation in Massachusetts. The court said (244 Fed. at 930):

> "The Court of Appeals for the District of Columbia, in Palmer v. Thompson, 20 App. D. C. 273, expressly held that, in the absence of an act of Congress conferring the power, the federal court in

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[8]And had been since 1789 (1 Stat. 81; Act of Sept. 24, 1789, Ch. 20, Sec. 14). See Appendix "F" attached hereto.

[9]"The Supreme Court and the circuit and district courts . . . shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law." The addition of the words in 1651(a) "or appropriate" and the change of the words "for the exercise" to "in aid" did not, we submit, effect any change of meaning.

one district had no authority in a criminal case to issue its writ to the marshal of another federal district, commanding him to arrest a person within his jurisdiction, but outside that of the court issuing the writ, and that such power was not conferred by section 716 of the Revised Statutes. . . .

"Furthermore, we do not think section 262 of the Code (R. S. Sec. 716; Judiciary Act Sept. 24, 1789, c. 20, Sec. 14, 1 Stat. 73) gives authority to a federal District Court to issue processes to run beyond the limits of the territory in which it is established, but rather that it is a designation of the form or character of writs which such court may issue within the territory where it is established. Hills & Co. v. Hoover, 220 U. S. 329, 336, 337, 31 Sup. Ct. 402, 55 L. Ed. 485, Ann. Cas. 1912C, 562; McClellan v. Carland, 217 U. S. 269, 279, 30 Sup. Ct. 501, 54 L. Ed. 762."

Accordingly the fact that the district court has jurisdiction over the cause and the defendant, does not enlarge its territorial jurisdiction. Where extraterritoriality is desired, Congress and this Court (but only through its rule making power) says so.

And, of course, the fact that as to some matters (subpoenas and warrants) the district courts have been given extraterritorial jurisdiction does not mean that in other respects (here, writs of *habeas corpus ad prosequendum*) the jurisdiction is likewise enlarged. To so hold would set at naught the need for "specific exceptions" to the territorial rule (*Ahrens v. Clark*, 335 U. S. at 190).

The court below misreads, we respectively suggest, this Court's opinion in *United States v. Hayman*, 342

U. S. 5. In *Hayman* this Court was careful to make very clear that it was not modifying or making inroads on *Ahrens*, or enlarging the territorial sweep of the writ of habeas corpus. Thus the Court said (342 U. S. at 220):

> ". . . *This is not a habeas corpus proceeding.* The sentencing court in the Southern District of California would not be issuing an original writ of habeas corpus to secure respondent's presence in another district. Issuance of an order to produce the prisoner is auxiliary to the *jurisdiction* of the trial court over respondent *granted in Section* 2255 itself and invoked by respondent's filing of a motion under that Section." (Italics added.)

As we understand *Hayman*, it is this:

Prior to the enactment of 28 U. S. C. 2255, when a prisoner desired to test the validity of the sentence which had been imposed upon him, he filed habeas corpus proceedings in the district in which he was confined. Because of the territorial limitation of habeas corpus, the prisoner could not file such proceedings in the district in which he had been sentenced. The result was that there arose the practical difficulty of holding the hearing in the district of the prisoner's confinement, thus requiring the bringing of witnesses, records, etc. from the district in which defendant had been sentenced. To meet these difficulties section 2255 was enacted, and by its provisions:

1. The defendant was given the right to file his motion in the district court in which he had been sentenced;

2. The district court in that district was given the jurisdiction to hold the hearing in that district: and,

3. That district court was given the authority —by the statute itself—to produce the prisoner at the hearing, even though he be confined in another district.

In other words, Congress had made a *specific exception* to the rule that the power of the district courts to issue writs is limited to the territorial jurisdiction of said courts. This exception was found by this Court in Section 2255 itself.

But the statutes (18 U. S. C. 1951, 875(b) and 371), for alleged violation of which defendant is charged, either expressly or by implication, extend the territorial jurisdiction of the trial court. Hence 28 U. S. C. 1651(a) cannot enlarge that jurisdiction. And the statute (28 U. S. C. 2241) which gives the Court jurisdiction to issue the writ altogether is, as *Ahrens* makes clear, limited territorially.

The concern of the Court below [R. 29] that a decision upholding petitioner's contention would mean that the District Courts would be impotent to bring a prisoner to trial from another district, is unnecessary. Petitioner claims only that the court cannot exceed its jurisdiction and that if Congress wants to make habeas corpus jurisdiction extraterritorial, it knows how to, and can, do so. As has been said: "The objection to judicial restraint of an unauthorized exercise of power is not

weighty." (*Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 157, concurring opinion).

It seems clear, therefore, that the decision of the court below is in direct conflict with this Court's decision in *Ahrens* and that the court below misunderstood the meaning of this Court's ruling in *Hayman*.

The better reasoned decisions of the lower federal courts are in accord with petitioner's argument.

In *Edgerly v. Kennelly*, 215 F. 2d 420 (C. A. 7, 1954) cert. den. 348 U. S. 938, the court held that the District Courts did not have jurisdiction to issue an extra-territorial writ of *habeas corpus ad testificandum*. In answer to the argument that because the court had jurisdiction over plaintiff's action under the Civil Rights Act (former 8 U. S. C. 43, 47, 48; now 42 U. S. C. 1983, 1985, 1986), it had jurisdiction to bring him before the court under 28 U. S. C. 1651, the court said (pp. 421-422):

> ". . . Plaintiff . . . concedes . . . that the jurisdiction of the court, if it exists, must be found in the 'all writs statute,' 28 U.S.C.A. §1651, which authorizes a court to 'issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.' It is pointed out that the court had jurisdiction of the action and it was in aid of its jurisdiction that the plaintiff be brought to Chicago to testify in his own behalf. This contention, if accepted, would mean that this provision enlarged the territorial jurisdiction of the court. We think that such

is not its purpose. While the section augments the power of a court in cases of existing jurisdiction, it in no wise expands or extends its territorial jurisdiction."[10]

While *Goldberg v. Hoffman*, 225 F. 2d 463 (C. A. 7, 1955), did not involve an *ad testificandum* or *ad prosequendum* matter, it is clear that the Seventh Circuit adheres to its *Edgerly* decision and considers it to be sound law. Thus it said (p. 467):

> "The historic limitation of the jurisdiction of the various federal courts to the Circuit or District in which they sit is too well established to require restatement. *Georgia v. Pennsylvania R. Co.*, 324 U. S. 439, 467, 65 S. Ct. 716, 89 L. Ed. 1051; *Edgerly v. Kennelly*, 7 Cir., 215 Fed. 2d 420; *Reconstruction, Finance Corp. v. Maley*, 7 Cir., 125 Fed. 2d 131, 137. We have recently rejected as untenable the theory that the All Writs Act, 28 U.S.C.A. §1651, may enlarge the territorial jurisdiction of the federal courts. *Edgerly v. Kennelly, supra*, 215 Fed. 2d at page 421-422. See also *Ahrens v. Clark*, 335 U. S. 188, 68 S. Ct. 1443, 92 L. Ed. 1898."

See also *United States v. Kniess*, 251 F. 2d 669 (1958).

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[10] *Cf. Shimola v. Local Board No.* 42, 40 Fed. Supp. 808, 809 (N. D. Ohio, 1941):

> "That section (28 USC 377, the predecessor to the now 28 USC 1651) however, merely makes available to the District Court 'all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions,' but it does not confer or expand jurisdiction."

In *Yodock v. United States*, 196 F. 2d 1018 (C. A. 3, 1952), the defendant had been brought to trial from another jurisdiction by means of a writ of *habeas corpus ad prosequendum*. *After* sentence he moved to vacate on the ground that the trial court had not acquired jurisdiction over him. The court affirmed the trial court's order denying the motion to vacate on the ground that (p. 1018): "The manner in which his presence was secured did not affect the power of the court to try him."[11] But as to the validity of the extraterritorial writ of *habeas corpus ad prosequendum*, the court said (*ibid*):

> "It may be conceded that the writ was improperly issued outside the Middle District of Pennsylvania."

A noteworthy district court decision of the Third Circuit, and one which has not been overruled or criticized, but on the contrary has been cited with approval and followed[12] is *Phillips v. Hiatt*, 83 Fed. Supp. 935 (D. Del. 1949).[13] In that case a defendant in a criminal action pending before the Delaware Federal Court was incarcerated in the Federal Penitentiary at Atlanta, Georgia. Claiming the right to a speedy trial

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[11] *Cf.* this Court in *Frisbie v. Collins*, 342 U. S. 519.

[12] *Edgerly v. Kennelly*, 215 F. 2d 420, 422 (C. A. 7, 1954), cert. den. 348 U. S. 938; *In re Van Collins*, 160 Fed. Supp. 165, 167 (D. Me. 1958); and see *United States v. Coles*, 88 Fed. Supp. 150, 151, n. (D. Ore. 1949).

[13] In the oral argument before this Court in *Nelson v. County of Los Angeles*, No. 152, Oct. Term, 1959, 362 U. S. [illegible] ne of the Justices chided counsel for petitioners for not citing or relying upon pertinent District Court cases. Counsel do not intend to make the same mistake here.

under the 6th Amendment, the defendant moved the court for a writ (though not so denominated) of *habeas corpus ad prosequendum*. The court thus posed the question (pp. 936-937):

> "The question in this case is whether a United States District Court has the power or jurisdiction to issue a writ of habeas corpus or other writ in the nature thereof on behalf of a person confined in a federal penitentiary outside the territorial limits of such court under a sentence imposed by another United States District Court, when the purpose of the writ is to have the prisoner brought within the territorial jurisdiction of the issuing court to stand trial on a new and different charge."

In answering the question in the negative, the court exhaustively discussed the matter. For example (p. 938):

> ". . . (A)ssuming that petitioner's counsel are correct in that the relief sought by petitioner may properly be granted under Section 1651, still such relief may not be granted by this court for the very same reason that relief may not be granted under Section 2241, viz., that the order of this court may not run beyond its territorial jurisdiction.
>
> "Under general provisions of law, a United States District Court cannot issue process beyond its territorial limits. *Georgia v. Pennsylvania R. Co.*, 1945, 324 U.S. 439, 467-468; 65 S. Ct. 716, 89 L. Ed. 1051. A specific exception by Congress is a prerequisite to the extension of the district court's jurisdiction beyond their respective territorial limits. . . ."

And it concluded its opinion (p. 940):

> "Irrespective of the desire of this court to secure to petitioner what may be deemed to be substantial constitutional rights, the lack of jurisdiction in the court compels a dismissal of the petition."

Another untampered with District Court decision[14] is *In the Matter of Karol Van Collins*, 160 Fed. Supp. 165 (D. Me. 1958). The situation there was essentially the same as in *Phillips v. Hiatt, supra*, the defendant seeking to be brought before the court for trial by means of a writ of *habeas corpus ad prosequendum*. In denying the writ, the court said (pp. 166-167):

> ". . . There is nothing in §1651 specifically giving to district courts the power to issue writs thereunder beyond their respective territorial limits. It follows, therefore, that this Court is without jurisdiction under §1651 to grant the relief sought for the same reason that it may not grant relief under §2241, viz., that the order of this Court may not run beyond its territorial jurisdiction. . . ."

Conclusion.

The judgment of the court below should be reversed and the writ of *habeas corpus ad prosequendum* ordered quashed.

Respectfully submitted,

A. L. WIRIN,
FRED OKRAND,
Attorneys for Petitioner,

WILLIAM B. BEIRNE,
Of Counsel.

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[14]See footnote 13, *supra*.

APPENDIX "A".

In the United States District Court, Southern District of California, Central Division.

United States of America, Plaintiff, v. Paul John Carbo, *et al.*, Defendants. No. 27973-CD.

Order.

The above cause having come on for hearing on March 28, 1960, the United States appearing by Robert John Jensen, Chief, Criminal Division, Assistant United States Attorney and Charles A. Lynberg, Assistant United States Attorney and the defendant Paul John Carbo appearing by his attorneys William B. Beirne and A. L. Wirin, it appearing that because of the illness of the said defendant Paul John Carbo and the performance upon him of a kidney operation on March 25, 1960, that it is improvident to transport said defendant from the New York City Prison, Bellevue Hospital, New York City to Los Angeles, California for trial on or before March 29, 1960, the date presently set for the trial of the above cause, and the Court having continued said trial date of said cause until July 12, 1960, and good cause appearing therefor:

1. It is ordered and adjudged that the Order of the Court dated March 16, 1960 ordering that a Writ of Habeas Corpus *ad Prosequendum* issue as prayed for in the application dated March 16, 1960, of the United States Attorney, is continued in full force and effect.

2. The order and Judgment of the Court dated March 16, 1960, denying said defendant's Motion to Quash said Writ of Habeas Corpus *ad Prosequendum* remains in full force and effect.

3. The execution of said Order of March 16, 1960 ordering that a Writ of Habeas Corpus *ad Prosequendum* issued as heretofore prayed for herein is continued, and the enforcement and execution of the Writ of Habeas Corpus *ad Prosequendum* issued by the Clerk of this Court on March 16, 1960 pursuant to the aforesaid Order, is continued and stayed in the following respects: said writ shall be executed on or after June 24, 1960; said defendant shall be transported from the New York City Prison, Bellevue Hospital, New York City to Los Angeles, California for trial, pursuant to said Writ, between June 24 and June 27, 1960, the defendant to be brought to Los Angeles by June 27, 1960 during said period between June 24 and June 27, 1960.

The Clerk shall issue an Amended Writ of Habeas Corpus *ad Prosequendum* pursuant to the foregoing Order.

Dated: This 28th day of March, 1960.

ERNEST A. TOLIN,
ERNEST A. TOLIN,
United States District Judge.

Approved as to form:
ROBERT JOHN JENSEN,
Of Counsel for the United States.

APPENDIX "B".

United States District Court, Southern District of California, Central Division.

United States of America, Plaintiff, v. Paul John Carbo, aka Frankie Carbo, *et al.*, Defendant. No. 27973, Criminal.

Amended Writ of Habeas Corpus ad Prosequendum, Being an Amendment to the Writ of Habeas Corpus ad Prosequendum Issued.

Filed March 16, 1960.

The President of the United States of America.

To: The Warden, Sheriff or Jailor of New York City Prison, Bellevue Hospital, New York, New York.

Greeting:

We command that you produce and deliver the body of Paul John Carbo, aka Frankie Carbo now in your custody before the Honorable Ernest A. Tolin, Judge of the United States District Court, Second Floor, United States Post Office and Courthouse, 312 North Spring Street, Los Angeles, on July 12, 1960, at the hour of 10:00 a.m., in order that said defendant in the above-entitled case may then and there be tried at said time and place, and also at such other times as may be ordered by the said court, and have you then and there this writ.

The delivery of the body of said Paul John Carbo, aka Frankie Carbo to the Courtroom of said United States District Court, as aforesaid, and the return by you of said defendant to your custody shall be deemed sufficient compliance with the writ.

The enforcement and execution of the foregoing writ of Habeas Corpus *ad Prosequendum* is continued and stayed in the following respects: this Writ shall be executed on or after June 24, 1960; said defendant shall be transported from the New York City Prison, Bellevue Hospital, New York City to Los Angeles, California for trial, pursuant to said Writ, between June 24 and June 27, 1960, the defendant to be brought to Los Angeles by June 27, 1960 during said period between June 24 and June 27, 1960.

Witness the Honorable Ernest A. Tolin, Judge of the United States District Court for the Southern District of California.

Dated: March 30, 1960.

Clerk, United States District Court,
Southern District of California,
By EDW. F. DREW,
Deputy Clerk.

APPENDIX "C".

United States District Court, Southern District of California, Central Division.

United States of America, Plaintiff, v. Paul John Carbo, aka Frankie Carbo, *et al.*, Defendants. No. 27973-CD.

Second Amended Writ of Habeas Corpus Ad Prosequendum, Being an Amendment to the Writ of Habeas Corpus Ad Prosequendum Issued March 16, 1960.

The President of the United States of America.

To: The United States Marshal, Southern District of New York; The United States Marshal, Southern District of California; or any United States Marshal; The Warden, Sheriff or Jailor, Prison Ward, Bellevue Hospital, New York, New York; The Warden, or Jailor, New York City Penitentiary, Rikers Island, Bronx, New York; or such other officer of the State of New York having custody of the person of Paul John Carbo, aka Frankie Carbo.

GREETING

We Command that you produce and deliver the body of Paul John Carbo, aka Frankie Carbo, now in your custody before the Honorable Ernest A. Tolin, Judge of the United States District Court, Second Floor, United States Post Office and Courthouse, 312 North Spring Street, Los Angeles, California, on July 12, 1960, at the hour of 10:00 a.m., in order that said defendant in the above-entitled case may then and there be tried at said time and place, and also at such other times as may be ordered by said Court, and have you then and there this Writ.

The delivery of the body of said Paul John Carbo, aka Frankie Carbo, to the Courtroom of said United States District Court, as aforesaid, and the return by you of said defendant to your custody shall be deemed sufficient compliance with the Writ.

The enforcement and execution of the foregoing Writ of Habeas Corpus ad Prosequendum is continued and stayed in the following respects: This Writ shall be executed on or after June 24, 1960; said defendant shall be transported from the New York City Prison, Bellevue Hospital, New York City, or from such other place within the State of New York that he may be held, to Los Angeles, California, for trial, pursuant to said Writ, between June 24 and June 27, 1960, the defendant to be brought to Los Angeles by June 27, 1960 during said period between June 24 and June 27, 1960.

Witness the Honorable Ernest A. Tolin, Judge of the United States District Court for the Southern District of California.

Dated: April 12, 1960.

Clerk, United States District Court,
Southern District of California,

By .....

Deputy Clerk.

APPENDIX "D".

United States District Court for the Southern District of California, Central Division.

United States of America, Plaintiff, v. Paul John Carbo, aka Frankie Carbo, *et al.*, Defendants. No. 27973-CD.

Order for Issuance of an Amended Writ of Habeas Corpus Ad Prosequendum.

Upon the application of the United States joined in by the counsel of record for defendant Paul John Carbo, the trial date of the within captioned case having been continued until February 14, 1961, and good cause appearing therefor, it is hereby

Ordered that an amended writ of habeas corpus ad prosequendum, being a further amendment to the writ of habeas corpus ad prosequendum issued March 16, 1960, shall be issued by the Clerk of this Court, which writ shall be in the same form as the last amended writ except as to the dates which shall be as follows:

A) Said new amended writ shall recite the trial date of this cause as being set for February 14, 1961, at the hour of 10:00 A.M.; and

B) Said writ shall provide that the execution of said writ shall commence on but not before January 28, 1961, and be completed on but not after February 1, 1961.

Dated: June 20, 1960.

ERNEST A. TOLIN,
United States District Judge.

APPENDIX "E".

United States District Court, for the Southern District of California, Central Division.

United States of America, Plaintiff, v. Paul John Carbo, aka Frankie Carbo, *et al.*, Defendants. No. 27973-CD.

Third Amended Writ of Habeas Corpus Ad Prosequendum, Being an Amendment to the Writ of Habeas Corpus Ad Prosequendum Issued March 16, 1960.

The President of the United States of America.

To: The United States Marshal, Southern District of New York; The United States Marshal, Southern District of California; or any United States Marshal; The Warden, Sheriff or Jailor, Prison Ward, Bellevue Hospital, New York, New York; The Warden, or Jailor, New York City Penitentiary, Rikers Island, Bronx, New York; or such other officer of the State of New York having custody of the person of Paul John Carbo, aka Frankie Carbo.

GREETING

We command that you produce and deliver the body of Paul John Carbo, aka Frankie Carbo, now in your custody before the Honorable Ernest A. Tolin, Judge of the United States District Court, Second Floor, United States Post Office and Courthouse, 312 North Spring Street, Los Angeles, California, on February 14, 1961, at the hour of 10:00 A.M., in order that said defendant in the above-entitled case may then and there be tried at said time and place, and also at such other times as may be ordered by said Court, and have you then and there this Writ.

The delivery of the body of said Paul John Carbo, aka Frankie Carbo, to the Courtroom of said United States District Court, as aforesaid, and the return by you of said defendant to your custody shall be deemed sufficient compliance with the Writ.

The enforcement and execution of the foregoing Writ of Habeas Corpus ad Prosequendum is continued and stayed in the following respects: This Writ shall be executed on or after January 28, 1961; said defendant shall be transported from the New York City Prison, Bellevue Hospital, New York City, or from such other place within the State of New York that he may be held, to Los Angeles, California, for trial, pursuant to said Writ, between January 28 and February 1, 1961, the defendant to be brought to Los Angeles by February 1, 1961, during said period between January 28 and February 1, 1961.

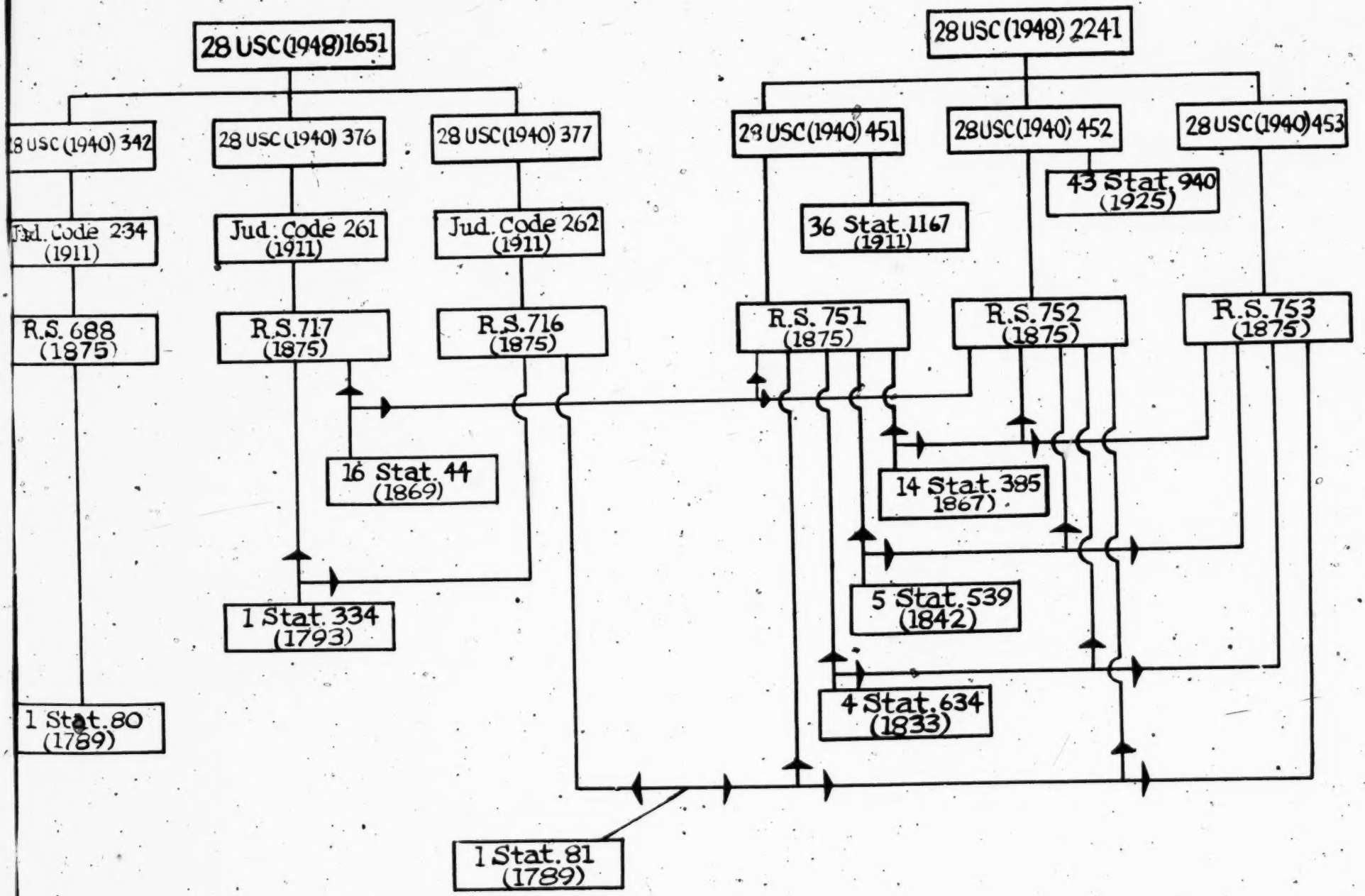
Witness the Honorable Ernest A. Tolin, Judge of the United States District Court for the Southern District of California.

Dated: June 20, 1960.

Clerk, United States District Court,
Southern District of California,

By JOSEFINA DEAN
Deputy Clerk.

Derivation of present 28 USC 1651 and 28 USC 2241



Appendix "F"